

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Philp S. Augur,  
Durham

File No. 2021-129B

**AGREEMENT CONTAINING A CONSENT ORDER**

This Agreement by and between Karen Cheney, Town of Durham, State of Connecticut, hereinafter referred to as "Respondent", and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Complainant alleged that a group known as "Durham for Korn," aka "DfK," failed to include an attribution on a mailing advocating a "yes" vote at a May 4, 2021, referendum in the Town of Durham as required by General Statutes § 9-621. Complainant further alleged that the group failed to properly register as a committee and report its expenses incurred but not paid, as required by § 9-605 and § 9-608, respectively.
2. More specifically, Complainant alleged that:
  - (1) *"Durham for Korn" ("DfK") sent a mass mailing to Postal Patrons of the town of Durham encouraging recipients to vote YES at the May 4, 2021 referendum. This mailer did not disclaimer/attribution to identify "Paid for by" and the name of its treasurer or agent. [9-621]*
  - (2) *DfK did not disclose the date of expenditures for the printing and production of the mailing; and it is therefore unclear whether they met deadline for registering or filing exemption from forming PAC. [9-605]*
  - (3) *DfK did not accurately disclose "period covered," until after the fact of mailing. DfK did not report date of expense incurred by not paid date; this reporting also obscures when registration/exemption filing was required. [9-608]*
3. This final decision is limited to Respondent and Allegations One and Three. Any settlement regarding Allegation Two and with any other individuals are treated under a separate agreement.

4. By way of background the Town of Durham held a Special Town Meeting on April 27, 2021, which adjourned to a referendum scheduled for May 4, 2021.

5. General Statutes § 9-608, provides in pertinent part:

(1) ***Each treasurer of a committee, other than a state central committee, shall file a statement***, sworn under penalty of false statement with the proper authority in accordance with the provisions of section 9-603, (A) on the tenth calendar day in the months of January, April, July and October, ... and (C) ***if the committee has made or received a contribution or expenditure in connection with any other election, a primary or a referendum, on the seventh day preceding the election, primary or referendum***

...

(c) (1) Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: (A) An itemized accounting of each contribution, if any, including the full name and complete address of each contributor and the amount of the contribution; ...; (C) ***an itemized accounting of each expense incurred but not paid, provided if the expense is incurred by use of a credit card, the accounting shall include secondary payees, and the amount owed to each such payee; ...***

(2) Each treasurer of a candidate committee established by a candidate in a primary, not later than thirty days after such primary, ***and each treasurer of a political committee formed for a single primary, election or referendum, not later than forty-five days after any election or referendum not held in November, shall file statements in the same manner as is required of them under subdivision (1) of this subsection...***

[Emphasis added.]

6. General Statutes § 9-621, provides in pertinent part:

(c) ***No business entity, organization, association, committee, or group of two or more individuals who have joined solely to promote the success or defeat of a referendum question shall make or incur any expenditure for any written, typed or other printed communication which promotes the success or defeat of any referendum***

*question unless such communication bears upon its face, as a disclaimer, the words “paid for by” and the following: ... (2) in the case of a political committee, the name of the committee and the name of its treasurer; (3) in the case of a party committee, the name of the committee; or (4) in the case of such a group of two or more individuals, the name of the group and the name and address of its agent.*  
[Emphasis added.]

7. It is not disputed that Respondent, along with Elizabeth Buckheit, engaged in an effort to organize support and advocate for a “yes” vote on the May 4, 2021, referendum.
8. After investigation, the Commission finds that Ms. Buckheit registered DfK with the Durham Town Clerk’s office as a political committee to support a “yes” vote on the referendum. Further, the Commission finds that Respondent was designated as treasurer of DfK.
9. Respondent Cheyney was fully cooperative with this investigation. She claims that under time constraints, owing to the quick time period between adjournment of a town meeting and the resulting referendum, she nevertheless worked hard to follow the rules.
10. More specifically she sought help from the Durham Town Clerk’s office and Commission staff to both understand and comply with the relevant campaign finance laws regarding spending to advocate on a referendum.
11. The Commission finds that Respondent appears to have acted in good faith in her attempts to comply with the requisite campaign finance laws and requisite filing and disclosure requirements<sup>1</sup>. In response to this complaint and investigation, she asserted:

*I attempted to file and do everything as promptly as I could, after reading all of the materials. I spoke with the SEEC three times and the Town Clerk at least 5 times once I realized that this group of individuals qualified as a PAC and needed to file.*

*The postcard does not have the language “paid for by” on it. At the time, I did not know this group of interested citizens constituted a PAC or that this language was required. I asked for help with the mock up for the mailing from The Printing Company, which has done these types of postcards many times. They told me I needed to*

<sup>1</sup> Commission records indicate that Ms. Cheyney indeed contacted the Commission for assistance on several occasions at the relevant time period regarding requirements for a group making expenditures in support of a referendum.

*put the organization on the postcard, but they did not tell me I needed to indicate that the organization paid for the postcard. I talked to the person who had filed the petition about needing a name and she approved us calling ourselves Durham for Korn. The "paid for by" language was not included because I did not realize that the rules for a Town Committee applied to our group of concerned, bipartisan citizens. Now that I know, should something like this ever happen again, I will include the appropriate language.*

Allegation One

12. Complainant alleged that Respondent failed to provide a disclaimer on a mailer that advocated for a referendum as required by General Statutes § 9-621.
13. General Statutes Sec. 9-621 (c) (4) requires for communications advocating for a referendum "...that in the case of a group of two or more individuals that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee, the name of the group and the name and address of its agent." If a referendum committee has been formed the requirement would be "paid for by," the name of the committee and the name of its treasurer.
14. After investigation, it was determined that the mailer produced and disseminated by DfK advocating a "yes" vote pertaining the May 4, 2021 referendum in Durham did not have the words "paid for by," and did not included the name and address of its agent.<sup>2</sup>
15. The Commission finds that the because the DfK mailer did not contain "paid for by" and the name and address its agent, it did not meet the disclaimer requirements provided by General Statutes § 9-621.
16. The Commission concludes therefore that the Respondent, as DfK treasurer, failed to include a full disclaimer on its referendum mailer in violation of General Statutes § 9-621.

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<sup>2</sup> The Commission notes that the mailing did contain the name of the DfK group and a return address; and therefore confusion, or a lack of transparency, as to the source of the communication was not present in this instance.

Allegation Three

17. Complainant alleged that Respondent and DfK did not fully disclose its expenditures to advocate for the May 4, 2021, referendum in violation of General Statutes § 9-608.
18. General Statutes § 9-608 requires that expenses incurred but not paid must be disclosed on campaign finance statements. The threshold question for Allegation Three therefore is on what date did the group contract with order or otherwise commit to the purchase of services and materials such that they had an obligation to pay the vendor or provider.<sup>3</sup>
19. After investigation, the Commission finds that on April 28, 2021, DfK incurred expenses in the amount of \$1,655.82 for printing and postage of a mailer advocating for a “yes” vote at the May 4, 2021, Durham referendum. The Commission finds therefore that the expense incurred by DfK occurred six days prior to the referendum.
20. Pursuant to General Statutes § 9-608 (2), the Commission concludes that based on an expense incurred but not paid by DfK which occurred six days prior to a referendum the first financial statement by that committee was therefore due within 45 days of that May 4, 2021, referendum.
21. The Commission finds that Respondent as treasurer of DfK filed a financial disclosure statement with the Durham Town Clerk on May 6, 2021. This filing was well within the 45 days after the May 4, 2021 referendum as provided by the requirements of § 9-608 (2).
22. The Commission therefore dismisses Allegation Three because a violation of General Statutes §9-608 by Respondent as DfK treasurer was not supported by the facts after investigation.
23. The Respondent admits all jurisdictional facts and concurs that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
24. The Respondent waives:
  - a. Any further procedural steps;

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<sup>3</sup> Or, in other words, at what point did DfK incur expenses that it was liable to pay and disclose pursuant to campaign finance laws as a regulated political committee. See General Statutes § 9-608 (c) (C); which requires “an itemized accounting of each expense incurred but not paid, provided if the expense is incurred by use of a credit card, the accounting shall include secondary payees, and the amount owed to each such payee.”

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- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
25. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by either of the parties in any subsequent hearing, if the same becomes necessary.

**ORDER**

IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with General Statutes § 9-621.

The Respondent

By:

Karen Cheney  
Karen Cheney  
60 Guire Road  
Durham, Connecticut

Dated: 2/28/22

For the State of Connecticut

By:

Michael J. Brandi  
Michael J. Brandi, Esq.  
Executive Director and General Counsel  
And Authorized Representative of the  
State Elections Enforcement Commission  
20 Trinity Street, Suite 101  
Hartford, Connecticut

Dated: 3/1/22

Adopted this 2nd day of March, 2022 at Hartford, Connecticut by vote of the Commission.

Stephen T. Penny  
Stephen T. Penny, Chairman  
By Order of the Commission